

CHAPTER 297. - HUMAN RIGHTS

FOOTNOTE(S):

--- (30) ---

Editor's note—Ordinance No. 1120, § 1, adopted December 18, 2006, added a new chapter 297 to read as herein set out. Formerly, such chapter pertained to human relations and was repealed by Ord. No. 957, 11-25-96.

297.01. - Intent.

The City finds that discrimination on the basis of irrelevant characteristics exists and that it adversely affects all citizens and the quality of life and opportunities available to all people.

And is therefore addressed by this Chapter declaring that discrimination or harassment against any person because of irrelevant characteristics, including actual or perceived race, religion, ancestry, national origin, color, sex, age, height, weight, student status, marital status, familial status, veteran status, political affiliation or belief, sexual orientation, gender identity or expression, mental or physical limitation, or source of income is prohibited.

(Ord. No. 1120, § 1, 12-18-06)

297.02. - Definitions.

As used in this Chapter, the following words and phrases have the following meanings:

Age: Chronological age as measured from date of birth.

Ancestry: The nationality, ethnicity, or family lineage from which a person is a descendent.

Bona fide occupational qualifications: Characteristics that are reasonably necessary for the proper performance or evaluation of an occupation or the normal operation of a business.

Contractor: A person who by contract furnishes services, materials or supplies. "Contractor" does not include a person who is merely a creditor or debtor of the City, such as those holding the City's notes or bonds or persons whose notes, bonds or stock are held by the City.

Discriminate/discrimination: To harass or treat differently or the act of harassing or treating differently, a person, or the person's friends, relatives, or associates, based in whole or in part on irrelevant characteristics of that person.

Employee: A person, paid or unpaid, performing work duties for an employer, including an applicant for paid or volunteer employment, or a participant in a training or apprenticeship program.

Employer: Any person with a business located within or doing business within the corporate City limits of Lansing or doing business with the City of Lansing who employs or is seeking to employ five or more employees, including any agent of that person or entity.

Employment: The act of an employee performing work duties for an employer.

Employment agency: Any person, paid or unpaid, who regularly undertakes to procure, refer, recruit, or place an employee with an employer, including any agent of that person.

Familial status: The state of being in a family or functional family.

Family: Any one of the following:

- (1) An individual who is pregnant; or
- (2) Two or more individuals related by blood within four degrees of consanguinity, marriage, adoption, or in a foster care relationship.

Functional family: A group of individuals who do not meet the definition of "family," living together as a single housekeeping unit and intending to live together as a single housekeeping unit for the indefinite future. "Functional family" does not include a fraternity, sorority, club, hotel, or other group of persons whose association is temporary or commercial in nature.

Gender identity or expression: A person's gender-related self-perception, appearance, expression or behavior, regardless of that person's sex at birth.

Harass/harassment: Physical conduct or communication directed at another person intentionally for the purpose or effect of creating an intimidating, hostile, or offensive environment with regard to employment, places of public accommodation, public services, or housing.

Housing status: The state of having or not having a fixed residence, including, but not limited to, the state of owning or renting (with or without receiving public housing assistance) a place to live. This includes a person's type of dwelling or shelter, including, but not limited to, single family or multiple family homes, apartments, condominiums, rooming houses, housing cooperatives, hotels, motels, public or subsidized housing units retirement homes, nursing homes, and temporary or long-term shelters.

Irrelevant characteristic/irrelevant characteristics: Any status or condition which is unrelated to a person's ability to:

- (1) Safely and competently perform specific duties of a particular job or profession, or qualify for promotion,
- (2) Use or benefit from a place of public accommodation,
- (3) Use or benefit from public services, or
- (4) Acquire, rent, or maintain property.

"Irrelevant characteristics" do not include bona fide occupational qualifications but do include a person's actual or perceived race, religion, ancestry, national origin, color, sex, age, height, weight, student status, marital status, familial status, housing status, veteran status, political affiliation or belief sexual orientation, gender identity or expression, mental or physical limitation, and source of income.

Labor organization: Any union, committee, association, or organized group of employees that exists primarily for the purpose of dealing with employment concerns, grievances, wages, labor disputes, rates of pay, hours of work, or other terms or conditions of employment.

Marital status: The state of being single, married, separated, divorced, in a functional family, or a surviving spouse.

Mental limitation: Actual or perceived disability or handicap, as those terms are defined in the Michigan Persons With Disabilities Civil Rights Act, or limitation regarding mental capabilities unrelated to a person's ability to:

- (1) Perform a particular job or profession or qualify for promotion,
- (2) Use or benefit from a place of public accommodation,
- (3) Use or benefit from public services, or
- (4) Acquire, rent, or maintain property.

"Mental limitation" includes, but is not limited to, developmental disabilities, psychological conditions, and the use by any person of adaptive devices, aids, or medication to mitigate such limitations. "Mental limitation" does not include any condition caused by the current use of an illegal or controlled substance or alcohol.

National origin: The country where a person or a person's ancestors were born. Discrimination against a person based on national origin shall include discrimination against nonnaturalized citizens and persons for whom English is a second language.

Perceived: As used in this chapter "perceived" refers to the perception of the respondent and not the perception of the claimant.

Person/persons: One or more individuals, partnerships, associations, or organizations; labor organizations, labor unions, or joint apprenticeship committees; businesses, companies, or corporations; legal representatives, receivers, trusts, or trustees; unincorporated organizations; employers or employment agencies; employees or contractors; realtors, real estate brokers, salespersons, or leasing agents; the City of Lansing, agencies of the city, and any recipient of city funds or any other legal or commercial entity.

Physical limitation: Actual or perceived disability or handicap, as those terms are defined in the Michigan Persons With Disabilities Civil Rights Act, or limitation regarding physical capabilities and human motor performance unrelated to a person's ability to:

- (1) Safely and competently perform specific duties of a particular job or profession or qualify for promotion,
- (2) Use or benefit from a place of public accommodation,
- (3) Use or benefit from public services, or
- (4) Acquire, rent, or maintain property.

"Physical limitation" includes, but is not limited to, blindness or partial sightedness, deafness or hearing impairment, muteness, partial or total absence of any body part(s), speech impairment, motor impairment, and the use by any person of adaptive devices or aids to mitigate such limitations.

"Physical limitation" does not include any condition caused by the current use of an illegal or controlled substance, or alcohol.

Place of public accommodation: A place open to the general public that is a facility or business of any educational, governmental, nonprofit, health, day care, entertainment, cultural, recreational, refreshment, transportation, or human services, financial, or other business of any kind, whose goods, services, facilities, activities, privileges, or advantages are extended, offered, sold, rented, leased, or otherwise made available to the public.

Public services: Goods, services, facilities, activities, privileges, or advantages extended, offered, sold, rented, leased, or otherwise made available to the public through a department, agency, board, or commission owned, operated, or managed by or on behalf of the state or a political subdivision of the state or a nonprofit organization, including tax-exempt private agencies, which receive financial support through the solicitation of the general public or through governmental subsidy of any kind.

Real property: Any habitable or potentially habitable land or building, as used in this definition "habitable building" includes, but is not limited to, single and multiple family homes, apartments, condominiums, housing cooperatives, mobile homes or trailers, mobile home or trailer parks, and tenements, including any lease or interest in real property.

Religion: All aspects of religious observance, dress, practice, and belief.

Sexual orientation: Male or female homosexuality, heterosexuality or bisexuality, whether past or present.

Sex: The condition of being male or female. Discrimination based on sex includes sexual harassment, which means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature when:

- (1) Submission to such conduct or communication is made a term or condition either explicitly or implicitly to obtain employment, public accommodation, or housing; or

- (2) Submission to or rejection of such conduct or communication by a person is used as a factor in decisions affecting such person's employment, public accommodation, or housing; or
- (3) Such conduct or communication has the purpose or effect of substantially interfering with a person's employment, public accommodation, or housing, or creating an intimidating, hostile, or offensive employment, public accommodation, or housing environment.

Student status: The current state of pursuing a diploma/degree at any educational institution.

Source of income: Any legal source from which a person obtains money.

Veteran status: Having served in any unit of the United States Armed Forces or their reserve components, including the National Guard and the Coast Guard.

(Ord. No. 1120, § 1, 12-18-06)

297.03. - Prohibitions in employment.

- (a) Except as otherwise provided, no person shall discriminate against any other person with regard to recruiting, referring, hiring, contracting, compensating, grading, classifying, promoting, demoting, disciplining, terminating or otherwise restricting or conditioning terms and privileges of employment based on:
 - (1) Irrelevant characteristics; or
 - (2) The results of physical or mental examinations that are not directly related to the bona fide occupational qualifications for the job sought.
- (b) Except as otherwise provided, no person shall discriminate against any other person with regard to offering, selecting, extending, terminating, or otherwise restricting or conditioning terms, privileges, or representation of membership in any labor organization or apprentice program based on irrelevant characteristics.
- (c) Except as otherwise provided, no person shall discharge, terminate, expel, or otherwise discriminate against any other person because that person has opposed any discriminatory practice forbidden by this chapter or has filed a complaint, testified, or assisted in any proceeding regarding any discriminatory practice forbidden by this chapter.

(Ord. No. 1120, § 1, 12-18-06)

297.04. - Prohibitions in places of public accommodation.

- (a) No person shall discriminate against any other person by withholding, denying, curtailing, or otherwise limiting the full use and enjoyment of places of public accommodations.
- (b) No person shall prohibit a breastfeeding mother from or segregate a breastfeeding mother within any place of public accommodation where she and the child would otherwise be authorized to be.

(Ord. No. 1120, § 1, 12-18-06)

297.05. - Prohibitions in provision of public services.

- (a) No person shall discriminate against any other person in providing information, offering access, or making referrals regarding public services, or by withholding, denying, curtailing, or otherwise limiting the full use of and benefit from public services.

(Ord. No. 1120, § 1, 12-18-06)

297.06. - Prohibitions in housing.

- (a) No person shall discriminate in referring, leasing, selling, renting, showing, advertising, pricing, offering, inspecting, listing, or otherwise making available any real property, including discrimination in providing information and receiving or communicating a bona fide offer on any real property.
- (b) No person shall discriminate in (a) the application, conditions, or granting of mortgages or other financing, (b) the offer, conditions, or sale of home-owner or rental insurance, or (c) the contracting of construction, rehabilitation, maintenance, repair, or other improvement of any housing facility.
- (c) No person shall refuse to lend money for the purchase or repair of any real property or insure any real property solely because of the location in the city of such real property.
- (d) No person shall promote any sale, rental, lease, sublease, exchange, transfer, or assignment of real property by representing that changes are occurring or will occur in an area with respect to any irrelevant characteristics.
- (e) No person shall indicate, communicate, or otherwise represent to another person that any real property or interest therein is not available for inspection, sale, rental, or lease knowing in fact it is available, including failing to make a person aware of a real property listing, refusing to permit inspection of real property, and representing that a property has been sold when in fact it has not.
- (f) No person shall offer, solicit, accept, use or retain a listing of real property or an interest therein with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith.

(Ord. No. 1120, § 1, 12-18-06)

297.07. - Other prohibited practices.

- (a) No person shall adopt, enforce, or employ any policy or publish, circulate, post, mail, or otherwise broadcast any statement, advertisement, sign, or notice or use a form of application or make a record of inquiry which directly or indirectly discriminates or indicates discrimination in providing employment, public accommodations, public services, or housing.
- (b) No person shall discriminate in the publication or distribution of advertising material, information, or solicitation regarding employment, public accommodations, public services, or housing.
- (c) No person shall coerce, intimidate, threaten, harass, retaliate against, or interfere with any person:
 - (1) In the exercise or enjoyment of, or on account of one's having exercised or enjoyed, or on account of one's having aided or encouraged any person in the exercise or enjoyment of, any right protected in this chapter; or
 - (2) Making a complaint or assisting in an investigation regarding a violation or alleged violation of this chapter.
- (d) No person shall require, request, conspire with, assist, or coerce another person to:
 - (1) Discriminate in any manner prohibited by this chapter; or
 - (2) Intimidate, threaten, harass, or retaliate against another person for making a complaint or assisting in an investigation regarding an alleged violation of this chapter.
- (e) No person shall provide false or misleading information to any authorized person investigating a complaint regarding a violation or alleged violation of this chapter, or sign a complaint for a violation of this chapter based upon false or substantially misleading information.

(Ord. No. 1120, § 1, 12-18-06)

297.08. - Exceptions.

Exceptions to discrimination and harassment under this chapter shall include, but are not limited to:

(a) Employment;

- (1) This chapter does not apply to the employment of any person by his/her parent, spouse, or child.
- (2) It is permissible to discriminate in hiring and selecting between one person and another based on bona fide occupational qualifications. Upon a claim of discrimination, the Claimant shall have the burden of making a prima facie showing that a qualification or selection is based on an irrelevant characteristic. An employer shall then have the burden of establishing that a qualification or selection criterion is reasonably necessary for the claimant to perform in the normal operation of the business. The Claimant will then have the burden of showing that such qualification or criterion is mere pretext.
- (3) It is permissible to give preferential treatment in hiring to veterans and their relatives as required by federal or state law.
- (4) It is permissible to engage in a bona fide effort to establish, maintain, or improve employment opportunities for persons protected from discrimination and harassment under this chapter.
- (5) It is permissible to consider legal source of income as a bona fide occupational qualification where the employment involves non-compete agreements, trade secrets, or similar legally recognized restraints on employment based on source of income.

(b) Public accommodation and public services;

- (1) It is permissible to restrict the use of shower or changing areas in health clubs or recreational facilities on the basis of sex when separate and private shower or changing areas do not exist.
- (2) It is permissible to refuse to admit to a place of public accommodation serving alcoholic beverages a person under the legal age for purchasing alcoholic beverages.
- (3) It is permissible to refuse to admit persons under 18 years of age to a business providing entertainment or selling literature or merchandise, which the operator of the business deems unsuitable for minors, or which is a "sexually explicit matter" as defined by Section 3 of Act 33 of the Public Acts of 1978, codified at MCL 722.673.
- (4) It is permissible for an educational institution to limit the use of its facilities to those affiliated with such institution.
- (5) It is permissible to provide discounts on products or service to students, minors, and senior citizens.
- (6) It is permissible to restrict participation on athletic teams or in athletic events on the basis of age.

(c) Housing;

- (1) It is permissible to discriminate in any arrangement for the sharing of a single unit dwelling, the remainder of which is occupied by the owner or a member of his/her immediate family.
- (2) It is permissible for the owner of a dwelling devoted entirely to the housing or accommodation of a single sex to restrict occupancy and use on the basis of sex.
- (3) This chapter does not require any person who does not participate in the Federal Section 8 Housing Assistance Program to accept any subsidy, payment assistance, voucher or contribution in connection with such program, or to lease or rent to any tenant or prospective tenant who is relying on such a subsidy as payment for at least part of the rent.

(Ord. No. 1120, § 1, 12-18-06)

297.09. - Other exceptions as required by law.

This chapter shall not be construed to limit rights granted by State or Federal Constitution, law, rule or regulation, including but not limited to, the following:

- (a) It is permissible to discriminate in employment, public accommodation, public services, and housing based on a person's age, income level, or mental or physical limitations when such discrimination is required or allowed by Federal, State or local constitution, law, rule or regulation.
- (b) It is permissible for a governmental institution to restrict access to any of its facilities or to restrict employment opportunities based on duly adopted institutional policies that conform to Federal, State or local constitution, law, rule or regulation.
- (c) This chapter shall not be read to prohibit or interfere with the exercise of a person's first amendment rights.
- (d) It is permissible for a religious organization or institution to restrict employment opportunities, housing facilities, or accommodations that are operated as a direct part of religious activities to persons who are members of or who conform to the moral tenets of that religious institution or organization.
- (e) It is permissible to limit occupancy in a housing development or to provide public accommodations or employment privileges or assistance to persons of low income, over 55 years of age, or who have a physical or mental limitation.
- (f) It is permissible to discriminate based on a person's age when State, Federal, or local law requires it.
- (g) It is permissible to refuse to enter into a contract with an unemancipated minor.
- (h) Nothing in this chapter shall affect, replace, or diminish the duties, obligations, rights, or remedies as otherwise provided by any union contract, collective bargaining agreement, or Federal, State or local constitution, law, rule or regulation, which shall control over this chapter.
- (i) This chapter shall not be read to require an employer, whether public or private, to provide benefits to domestic partners in contravention of Article I, Section 25 of the Michigan Constitution.

(Ord. No. 1120, § 1, 12-18-06)

297.10. - Complaints.

- (a) Any person claiming to be discriminated against or harassed in violation of this ordinance may file with the Human Relations and Community Services Department (hereafter referred to as "the department") a complaint, in writing, setting forth with reasonable specificity the person or persons alleged to have violated this chapter, the specific nature of the violation and the date(s) of the alleged violation. A person filing a complaint must do so within 180 days of the incident forming the basis of the complaint.
- (b) To the extent permitted by law, all written complaints of discrimination in employment, public accommodation, public services, and housing received by the department shall be kept confidential.
- (c) The department shall:
 - (1) Be responsible for receipt, recordation, investigation, mediation, conciliation, recommendation, and/or referral to the Office of the City Attorney;

- (2) Ensure there are no undue burdens placed on a Claimant, which might discourage filing of a discrimination complaint;
- (3) Commence and complete the complaint investigation, mediation/conciliation, and recommendation process in a timely manner;
- (4) Promulgate and publish rules and guidelines for processing, investigating, mediating/conciliating, and recommending resolution of the complaint; and
- (5) Refer a complaint it deems valid and sufficiently egregious directly to the City Attorney for review and additional action.

(Ord. No. 1120, § 1, 12-18-06)

297.11. - Investigation and hearing.

- (a) During an investigation, the department may request the appearance of witnesses and the production of books, papers, records or other documents that may be relevant to a violation or alleged violation of this chapter.
- (b) If the department determines that the complaint and preliminary evidence gathered indicates a prima facie violation of an ordinance in this chapter, the department shall assign a person within the department to conduct a hearing (hereinafter referred to as the "Hearing Officer") within 90 days after completion of its preliminary investigation. The person who is alleged to have committed a violation (the "Respondent") and the claimant shall be sent by regular mail at least 14 days advance, notice of the scheduled date and time of the hearing and a request for each to appear. At the hearing, testimony will be taken. All testimony shall be on the record, under oath and either recorded or transcribed. Both Claimant and Respondent shall be allowed to testify, present evidence, bring witnesses to testify, and to cross-examine all witnesses at the hearing. Technical rules of evidence shall not apply.
- (c) A failure of either the Claimant or the Respondent to cooperate with the department may result in an adverse determination for that person at the hearing.

(Ord. No. 1120, § 1, 12-18-06)

297.12. - Findings and recommendations.

The Hearing Officer shall make findings of fact based on the testimony and evidence introduced at the hearing and shall recommend such relief as the Hearing Officer deems appropriate. The Claimant and Respondent shall have the right to appeal the Hearing Officer's findings and recommendations in writing within 30 days to the Director of the department. On appeal, the hearing record and Hearing Officer's findings and recommendations shall be reviewed by the Director of the department, who shall approve, approve with modification, or disapprove of the findings and recommendations. After the Director's review, the department's findings and recommendations shall be served by regular mail on the Claimant and Respondent to the complaint, who shall have 30 days to comply with such findings and recommendations, unless otherwise provided by the department.

(Ord. No. 1120, § 1, 12-18-06)

297.13. - Available recommendations.

Department recommendations may include, but are not limited to one or more of the following:

- (a) Ceasing the illegal conduct cited in the complaint and taking steps to alleviate the effect of such illegal conduct;

- (b) Providing that the Respondent apologize to the Claimant;
- (c) Closing the matter based upon a mediation/ conciliation agreement of the Claimant and Respondent;
- (d) Paying actual damages for injury or loss;
- (e) Hiring, reinstating, or promoting the Claimant, with or without back pay, or providing such fringe benefits as the Claimant may have been denied;
- (f) Selling or leasing of housing or dwelling unit in question to the Claimant;
- (g) Admitting the Claimant to a place of public accommodation or extending full and equal use and enjoyment of said place of public accommodation;
- (h) Paying some or all of the Claimant's costs, costs incurred at any stage of review;
- (i) Posting the explanation of and requirements for compliance with this chapter;
- (j) Dismissing the complaint; and
- (k) Imposing costs against a Claimant for a frivolously filed claim.

(Ord. No. 1120, § 1, 12-18-06)

297.14. - Civil infraction.

- (a) An action for a civil infraction for a violation of this chapter may be initiated by the department on the basis of its investigation of a complaint and issuance of findings and recommendations.
- (b) If the department determines that discrimination or harassment took place and the Respondent does not comply with the department's recommendation within the specified time period, the department may refer the matter to the City Attorney, County Prosecutor, the Michigan Department of Civil Rights, the United States Department of Justice, Department of Housing and Urban Development, or other appropriate enforcing agency.
- (c) The City Attorney may commence legal action by filing and serving a complaint to obtain injunctive relief or any other remedy in an effort to prevent further discrimination prohibited by this chapter and to remedy the effects of such discrimination.
- (d) A violation of a prohibited act in this chapter is designated a municipal civil infraction, is not a crime and shall not be punishable by imprisonment.
- (e) Schedule of civil fines. The violation shall be according to the following schedule:
 - (1) First violation\$150.00
 - (2) Second violation\$250.00
 - (3) Third (or any subsequent) violation\$500.00
- (f) Continuing violation.
 - (1) For an offense that is a single and discrete occurrence, a single violation shall accrue (for example, a single act of harassment like a racial epithet). Subsequent single and discrete occurrences shall result in additional violations according to the above schedule (for example, two separate instances of racial epithets would constitute a first and second violation).
 - (2) For offenses that are continuing in nature, rather than single and discrete, the first violation shall accrue with the first day of the occurrence, and subsequent violations shall accrue for each additional day of that occurrence (for example, an impermissible hiring practice that continues each day on an ongoing basis).
 - (3) For continuing violations under subsection (f)(2), the day of the first occurrence shall be measured from the day of service of the City Attorney's complaint.

(Ord. No. 1120, § 1, 12-18-06)

297.15. - Private actions.

Any person who is the victim of discrimination in violation of this chapter retains his or her right to pursue any and all other legal action to which the person may be entitled in addition to the remedies available under this chapter. Nothing in this chapter shall be construed to limit rights granted under the laws of the State of Michigan or the United States.

(Ord. No. 1120, § 1, 12-18-06)